

David P. Enzminger (SBN: 137065)
denzminger@winston.com

Louis L. Campbell (SBN: 221282)
llcampbell@winston.com

James C. Lin (SBN: 271673)
jalin@winston.com

WINSTON & STRAWN LLP
275 Middlefield Rd., Suite 205
Menlo Park, CA 94025
Telephone: (650) 858-6500
Facsimile: (650) 858-6550

Krishnan Padmanabhan (SB: 254220)
kpadmanabhan@winston.com

WINSTON & STRAWN LLP
200 Park Avenue
New York, NY 10166
Telephone: (212) 294-6700
Facsimile: (212) 294-4700

Attorneys for Plaintiff
CISCO SYSTEMS, INC.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

CISCO SYSTEMS, INC.

Plaintiff,

vs.

CAPELLA PHOTONICS, INC.

Defendant.

Case No. 20-cv-01858-EMC

**PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION TO DISMISS
PLAINTIFF'S COMPLAINT OR, IN THE
ALTERNATIVE, FOR A MORE DEFINITE
STATEMENT**

Date: July 2, 2020

Time: 1:30 p.m.

Place: Courtroom 5, 17th floor

1 Defendant Capella Photonics, Inc. (“Capella”) filed a motion to dismiss the Complaint of
2 Plaintiff Cisco System, Inc. (“Cisco”) seeking declaratory judgment that Cisco does not infringe
3 U.S. Patent Nos. RE 47,905 and RE 47,906. While Cisco disagrees with Capella’s reading of the
4 relevant case law and the need for more detail in the complaint, to avoid unnecessary motion
5 practice, Cisco has today filed a First Amended Complaint (“FAC”) pursuant to Fed. R. Civ. P.
6 15(a)(1)(B). Cisco’s FAC addresses the alleged deficiencies discussed in Capella’s motion to
7 dismiss, and therefore moots that motion.

8 It is “well-established” in the Ninth Circuit that an original complaint must be “treated
9 thereafter as non-existent” upon the timely filing of an amended complaint. *Ramirez v. County of*
10 *San Bernardino*, 806 F.3d 1002, 1008 (9th Cir. 2015). In turn, motions targeting an original
11 complaint are moot upon the filing of an amended complaint. *See id.* (“Because the Defendants’
12 motion to dismiss targeted the Plaintiff’s First Amended Complaint, which was no longer in effect,
13 we conclude that the motion to dismiss should have been deemed moot”).

14 Accordingly, Cisco respectfully requests that this Court dismiss as moot Capella’s motion to
15 dismiss.

16
17 Dated: June 1, 2020

WINSTON & STRAWN LLP

18
19 By: /s/ K. Padmanabhan
David Enzminger
20 Krishnan Padmanabhan
Louis Campbell

21
22 *Attorneys for Plaintiff*
CISCO SYSTEMS, INC.
23
24
25
26
27
28